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BEFORE THE ARIZONA CORPORATE

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE JOINT NOTICE AND) DOCKET NOS. T-01051B-10-0194
APPLICATION OF QWEST CORPORATION,) T-02811B-10-0194
QWEST COMMUNICATIONS COMPANY, LLC,) T-04190A-10-0194
QWEST LD CORP., EMBARQ) T-20443A-10-0194
COMMUNICATIONS, INC. D/B/A CENTURY) T-03555A-10-0194
LINK COMMUNICATIONS, EMBARQ) T-03902A-10-0194
PAYPHONE SERVICES, INC. D/B/A)
CENTURYLINK, AND CENTURYTEL)
SOLUTIONS, LLC FOR APPROVAL OF THE)
PROPOSED MERGER OF THEIR PARENT)
CORPORATIONS QWEST COMMUNICATIONS)
INTERNATIONAL INC. AND CENTURYTEL,)
INC.)

Arizona Corporation Commission

DOCKETED

NOV 10 2010



NOTICE OF FILING DIRECT TESTIMONY

Level 3 Communications, LLC, McLeodUSA Telecommunications Services, Inc. d/b/a
PAETEC Business Services, and tw telecom of arizona llc hereby give notice that they are filing
the attached Surrebuttal Testimony of Dr. August H. Ankum.

RESPECTFULLY SUBMITTED this 10th day of November 2010.

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27

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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QWEST CORPORATION, QWEST)	
COMMUNICATIONS COMPANY, LLC,)	
QWEST LD CORP., EMBARQ)	Docket No. T-01051B-10-0194
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EMBARQ PAYPHONE SERVICES, INC.)	Docket No. T-20443A-10-0194
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SOLUTIONS, LLC FOR APPROVAL OF THE)	Docket No. T-03902A-10-0194
PROPOSED MERGER OF THEIR PARENT)	
CORPORATIONS QWEST)	
COMMUNICATIONS INTERNATIONAL INC.))	
AND CENTURYTEL, INC.)	

SURREBUTTAL TESTIMONY

OF

DR. AUGUST H. ANKUM

ON BEHALF OF

tw telecom of arizona llc; Level 3 Communications, LLC; and
McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services

November 10, 2010

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I. PURPOSE AND SUMMARY

**Q. ARE YOU THE SAME DR. AUGUST H. ANKUM WHO PROVIDED
PREFILED DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to respond to certain portions of the Rebuttal Testimony offered by CenturyLink and Qwest (collectively, the “Joint Applicants” or “the Companies”), and to respond to the Direct Testimony offered by the ACC Staff. Specifically, I address portions of the Rebuttal Testimony of the following CenturyLink’s witnesses who offered rebuttal to my September 27, 2010, Direct Testimony: Michael Hunsucker,¹ Jeff Glover,² Kristin McMillan,³ and Todd Schafer,⁴ and Qwest’s witnesses Robert Brigham⁵ and Karen Stewart.⁶ Mr. Gates is also submitting Surrebuttal Testimony to respond to other aspects of the Joint Applicants’ Rebuttal Testimony. I also respond to the Direct Testimony

¹ Rebuttal Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Hunsucker Rebuttal”).

² Rebuttal Testimony of Jeff Glover on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Glover Rebuttal”).

³ Rebuttal Testimony of Kristin McMillan on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“McMillan Rebuttal”).

⁴ Rebuttal Testimony of Todd Schafer on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Schafer Rebuttal”).

⁵ Rebuttal Testimony of Robert Brigham on behalf of Qwest Corp., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Brigham Rebuttal”).

⁶ Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Stewart Rebuttal”).

1 offered by ACC Staff witness Armando Fimbres⁷ focusing on the wholesale-
2 related conditions that he recommends the Commission should adopt prior to any
3 approval of the proposed CenturyLink-Qwest merger.

4 **Q. BEFORE SUMMARIZING YOUR TESTIMONY, DO YOU HAVE SOME**
5 **PRELIMINARY OBSERVATIONS?**

6 A. Yes. Notwithstanding the Joint Applicants' incorrect testimony claiming that the
7 Joint CLECs have not demonstrated that the proposed transaction may result in
8 harmful effects and warrants the imposition of merger conditions, the Joint
9 Applicants themselves testify here and elsewhere to the following:

- 10 • They admit that there are few if any detailed plans on how to merge the
11 companies' operations.⁸
- 12 • They admit that after the first twelve months, the post-merger firm may,
13 and is in fact likely to, modify or change its operations support systems
14 (OSS).⁹
- 15 • They admit that modifications of or changes to its OSS are likely to result
16 in errors and/or service disruptions.¹⁰
- 17 • They fail to recognize the difference between CenturyLink's Section 251
18 OSS obligations and Qwest's Section 271 OSS obligations.¹¹
- 19 • They fail to acknowledge that the post-merger firm's competitive interests
20 do not coincide with those of its wholesale CLEC customers.¹²

⁷ Direct Testimony of Armando Fimbres, Public Utilities Analyst V, on behalf of Utilities Division, Arizona Corporation Commission, ACC Docket No. T-01051B-10-0194 et al, October 12, 2010 ("Fimbres Direct").

⁸ Hunsucker Rebuttal at p. 19 and Schafer Rebuttal at pp. 5-6.

⁹ Hunsucker Rebuttal at pp. 13 and 57; see also Schafer Rebuttal at p. 9 (explaining why "it is necessary to integrate the CenturyLink and Embarq systems") and CenturyLink Response to Arizona Corporation Commission Staff Data Request STF 7.15 ("CenturyLink anticipates...the consolidation of OSS and billing systems and sales and account management teams.").

¹⁰ Schafer Rebuttal at p. 7, lines 17-18 and p. 8, lines 22-23; see also, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Before the Minnesota Public Utility Commission, Docket No. P-421, et al./PA-10-456, Rebuttal Testimony of Duane Ring, CenturyLink Inc., September 13, 2010, at pp. 1-3.

¹¹ Hunsucker Rebuttal at p. 15.

1 In view of the above, it is clear that the Joint CLECs' proposed merger conditions
2 are justified and necessary to protect the interests of CLECs, their end users and
3 the public interest in promoting competition

4 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

5 A. I respond to the Joint Applicants' specific rebuttals to my Direct Testimony
6 concerning merger-driven uncertainty and lack of disclosed plans, as well as the
7 merger's potential benefits and risks. I demonstrate that the Joint Applicants'
8 witnesses:

- 9 • Continue to fail to supply sufficient post-merger planning details to
10 support the kind of fact-based evaluation that the Commission should
11 make;
- 12 • Misconstrue and fail to rebut my testimony addressing merger outcomes
13 and risks; and
- 14 • Disregard the fact that the concerns that they characterize as "CLEC
15 speculations" are grounded in comprehensive and in-depth analysis.

16 I respond next to the general claims advanced by Mr. Brigham and Ms. Stewart
17 that the Joint CLECs' proposed conditions are unrelated to the merger or
18 otherwise unnecessary. I demonstrate that, contrary to their claims, Qwest's
19 continued domination of wholesale markets within its service territory compels
20 adoption of the Joint CLECs' proposed conditions to protect the public interest in
21 promoting competition in Arizona's telecommunications service markets.

22 I then turn to the claims of the Joint Applicants' witnesses concerning the specific
23 Joint CLEC conditions supported within my Direct Testimony, and explain that:

¹² Brigham Rebuttal at pp. 10-11.

- 1 • Contrary to Ms. Stewart's suggestion, the Commission cannot rely upon
2 its existing rate-setting and complaint procedures to ensure that the
3 safeguards contemplated in Wholesale Rate Stability Conditions 2, 3, and
4 7 are actually achieved;
- 5 • Mr. Hunsucker fails to acknowledge my Direct Testimony that explained
6 why Conditions 2, 3, and 7 are necessary in the context of the merger and
7 are not attempts to circumvent existing law and rules; and
- 8 • Their rebuttals to the proposed Wholesale Service Availability Conditions,
9 Numbers 1, 6, 8, 9, 10, 12, 14 and 28, are similarly erroneous and do not
10 undermine my Direct Testimony, which explains why the conditions are
11 essential protections for the Commission to adopt if it approves the
12 merger.

13 Finally, I address several of the merger conditions proposed by the ACC Staff
14 witness Mr. Fimbres, specifically those relating to the goals of wholesale services
15 availability and rate stability as set forth in my Direct Testimony, and I explain
16 why Staff's proposals in many cases provide support for, or complement, the
17 more comprehensive conditions proposed by the Joint CLECs.

18 **Q. HAS THE REBUTTAL TESTIMONY OF THE JOINT APPLICANTS OR**
19 **STAFF'S DIRECT TESTIMONY CAUSED YOU TO CHANGE YOUR**
20 **TESTIMONY OR RECOMMENDATIONS?**

21 A. No. Neither the Companies' Rebuttal Testimony nor Staff's Direct Testimony
22 concerning the Joint CLECs' proposed merger conditions causes me to alter my
23 prior analysis or recommendations. I continue to recommend that, if the
24 Commission approves the proposed merger, it should impose all of the Joint
25 CLEC conditions that I have recommended, as well as those supported by Mr.
26 Gates.

1 **II. RESPONSE TO JOINT APPLICANTS' TESTIMONY**
2 **CONCERNING MERGER-DRIVEN UNCERTAINTY,**
3 **POTENTIAL BENEFITS AND RISKS, AND THE**
4 **COMMISSION'S STANDARD OF REVIEW.**

5 ***A. The Joint Applicants' witnesses acknowledge that merger-***
6 ***driven uncertainty is harmful to the public interest.***

7 **Q. DOES THE JOINT APPLICANTS' REBUTTAL TESTIMONY RELIEVE**
8 **ANY OF YOUR CONCERNS REGARDING THE UNCERTAINTY**
9 **CREATED BY THE PROPOSED MERGER AND THE RESULTING**
10 **HARM TO CLECS?**

11 **A. No, unfortunately it does not. My Direct Testimony and accompanying Exhibit**
12 **AA-3 have demonstrated how the proposed merger has created substantial**
13 **uncertainty for CLECs with respect to:**

- 14 • Systems and operations integration;
- 15 • Change Management Process;
- 16 • Performance Assurance Plan;
- 17 • Wholesale rates and services;
- 18 • Wholesale customer service; and
- 19 • Network investment.

20 As I explained in my Direct Testimony,¹³ these are all critical, customer-
21 impacting areas which this Commission should carefully evaluate before
22 determining whether the proposed transaction will cause "no harm." The Joint
23 Applicants' Rebuttal Testimony provides virtually no additional facts to define

¹³ Ankum Direct at pp. 59-60.

1 the merger's impact in these areas.¹⁴ Instead, the Joint Applicants' witnesses
2 simply continue to assert that "changes could be expected over time" but "[w]hat
3 those changes are have not been determined."¹⁵ That position is inconsistent with
4 the long-standing approach taken by this Commission and other regulators with
5 similar approval authority, under which regulators look at a proposed merger's
6 potentially harmful impacts and impose conditions as necessary to address those
7 potential impacts. As my Exhibit AA-3 demonstrates, the information supplied to
8 date by the Joint Applicants concerning those key issues is woefully incomplete,
9 and clearly insufficient to support the kind of fact-based evaluation that the
10 Commission should make.

11 **Q. HOW CAN THE COMMISSION APPROVE THE MERGER WITHOUT**
12 **PROTRACTED DELAY, YET ALSO MITIGATE THE HARMS CAUSED**
13 **BY UNCERTAINTY IF MORE DEFINITE POST-MERGER PLANS ARE**
14 **NOT FORTHCOMING?**

15 A. For the reasons I discussed in my Direct Testimony,¹⁶ I recommend that the
16 Commission deny the merger as proposed. In the alternative, the Commission
17 could approve the transaction with conditions designed to substantially reduce the
18 harmful uncertainties and other potential harmful impacts of the merger on
19 competition, CLECs, and CLEC end users. The Joint CLECs' proposed
20 conditions, which are set forth in Mr. Gates' Exhibit TJG-8 and explained in the

¹⁴ Mr. Hunsucker discusses some recent staffing decisions with respect to post-merger wholesale operations, at pp. 8-9 of his Rebuttal Testimony, but that information sheds little light on what changes will occur post-merger in the six customer-impacting areas I have identified.

¹⁵ Hunsucker Rebuttal at p. 57, lines 5-6; see also Schafer Rebuttal at p. 5.

¹⁶ Ankum Direct at pp. 65-66.

1 Direct Testimony that Mr. Gates and I have provided, remain the best means to do
2 this, and I continue to recommend their adoption. Thus, adoption of those
3 conditions would allow the Commission to act in a timely manner, yet also
4 mitigate those harms.

5 **Q. SHOULD THE COMMISSION SIMPLY APPROVE THE MERGER AS**
6 **PROPOSED, WITHOUT CONDITIONS, AND ADDRESS FUTURE**
7 **MERGER-RELATED CHANGES AND DISPUTES AS THEY ARISE, AS**
8 **RECOMMENDED BY THE JOINT APPLICANTS?**

9 A. No. There are many reasons to reject that approach. First, such a "wait-and-see"
10 approach would indefinitely prolong the uncertainty that CLECs will experience.
11 Applying conditions to any approval would avoid an extended period of
12 uncertainty and also limit the Merged Company's opportunities for abusive
13 practices aimed at handicapping CLECs, by more clearly delineating its post-
14 merger wholesale service and interconnection obligations that CLECs depend on.
15 Second, this proceeding is the opportune time (and possibly the only time) for the
16 Commission to consider the merger's impact on competitors in a systematic and
17 comprehensive fashion. If the Commission refrains from adopting the Joint
18 CLECs' proposed conditions now, it may have to address many (perhaps all) of
19 the same issues later, in piecemeal fashion, consuming even more resources of the
20 Commission and the parties involved. This is particularly likely with respect to
21 the proposed conditions addressing interconnection agreements: unilateral actions
22 by the Merged Company that contravene the intent of the relevant conditions

1 could result in disputes in multiple ICA negotiations that the Commission would
2 then be compelled to arbitrate, possibly *in seriatim*.

3 Third, Commission action to address these issues after the merger through
4 complaint proceedings would fail to provide a timely remedy for merger harm.
5 Of course wholesale customers can file complaints with the Commission, but the
6 delay associated with resolving such complaints could allow harms to wholesale
7 customers and competition to go unchecked. Indeed, the Commission's approval
8 authority is a pre-merger authority: companies are required to obtain Commission
9 approval *before* consummating mergers or acquisitions. The point of this
10 authority is to ensure that the public interest is protected before the merger takes
11 effect.

12 Finally, it is in no one's interest, including the Joint Applicants, to have the
13 merger approved on the basis of a cursory, incomplete review, and then later
14 bogged down by a succession of Commission investigations to resolve those key
15 issues that were not addressed earlier. Clearly, the best way forward is to address
16 the key issues now, and establish sufficient conditions and protections to avoid
17 uncertainty and protracted disputes and investigations in the future.

18 ***B. The Joint Applicants' witnesses misconstrue and fail to rebut***
19 ***my testimony addressing merger outcomes and risks, and***
20 ***concerning the Commission's appropriate standard of review.***

21 Q. MR. GLOVER ASSERTS THAT YOU "TESTIF[Y] VAGUELY THAT
22 'MOST MERGERS ARE NOT SUCCESSFUL'" AND THAT YOUR

1 **“TESTIMONY PROVIDES NO DATA OR REFERENCES TO VERIFY**
2 **THE STATEMENT ABOUT ‘MOST MERGERS.’”¹⁷ IS THIS CORRECT?**

3 A. No, it is not. The line of my Direct Testimony to which he refers (page 10, line 9)
4 actually reads “*I have already noted that* most mergers are not successful”
5 (emphasis added). Inexplicably, Mr. Glover has overlooked the discussion of
6 merger success and failure supplied at pages 5-6 of my Direct Testimony, which
7 provides a detailed citation to the academic literature on the subject,¹⁸ in support
8 of the general observation that about two out of three mergers are not successful.¹⁹
9 This observation was offered not to object to this particular merger, but rather as a
10 word of caution and further reason for careful scrutiny of the proposed
11 transaction. Moreover, this record of merger failure, well documented in my
12 testimony and unrebutted by the Companies’ witnesses, underscores the need for
13 and importance of merger conditions to protect the Companies’ wholesale
14 customers and the public interest in competition.

15 **Q. MR. BRIGHAM CLAIMS²⁰ THAT YOUR ANALYSIS OF THE**
16 **PROPOSED TRANSACTION’S RISKS AND BENEFITS IS FLAWED,**
17 **AND THAT “IT IS WRONG TO CONCLUDE THAT A MERGER**

¹⁷ Glover Rebuttal at p. 32, fn. 56.

¹⁸ See Ankum Direct at page 6, fn. 4.

¹⁹ Mr. Glover commits a similar error later in footnote 56, where he complains that I did not cite evidence that Frontier has been experiencing systems cut-over problems. In fact, if Mr. Glover had read beyond the introductory bullet point on p. 28 he references and reviewed the body of my Direct Testimony, he would have found the following at p. 31: “As noted in my Exhibit AA-2, Frontier’s integration of the former Verizon exchanges has been marred by recent wholesale OSS failures, ordering delays, understaffed Access Order centers, and trouble report backlogs. These problems are documented in detail in the testimony of Mr. Gates.” Mr. Gates has provided a detailed discussion of Frontier’s cut-over problems at pp. 101-107 of his Direct Testimony.

1 **PRESENTS LESS RISK TO STOCKHOLDERS THAN TO OTHER**
2 **STAKEHOLDERS.”²¹ IS HE CORRECT?**

3 A. No. Mr. Brigham entirely overlooks the point made in my Direct Testimony that
4 shareholders of the Companies, both pre- and post-merger, are stakeholders
5 *entirely at their own volition*:

6 [They] can sell their shares if they anticipate that things will go
7 awry, or, alternatively, hold on to their shares to reap whatever
8 benefits they may anticipate: it is a risk-return tradeoff each
9 shareholder is free to either assume or walk away from.²²

10 The circumstance that Mr. Brigham cites, that certain stockholders “lost their
11 entire investment” when the Worldcom-MCI combination went bankrupt,²³
12 simply reflects those stockholders’ willingness to stay in the game and accept the
13 risk of potential losses, as well as potential rewards.²⁴ If they ultimately incurred
14 large financial losses, that is attributable to their poor judgment (as revealed in
15 hindsight), not to an *involuntary imposition* of risks.

16 As I then explained further, that freedom of choice (i.e., to accept the merger’s
17 risks or to exit) does not exist for other, captive stakeholders, most notably
18 CLECs, who depend on the Companies for critical wholesale inputs.²⁵ I explain
19 this dependence in more detail below (see Section III.B).

²⁰ Brigham Rebuttal at pp. 31-32.

²¹ *Id.* at p. 32, lines 15-16.

²² Ankum Direct at p. 9, lines 3-6.

²³ Brigham Rebuttal at p. 32, lines 11-13.

²⁴ For other stakeholders that are set to reap significant returns, see, “Windfall for Qwest Top Execs,” by Andy Vuong, *The Denver Post*, 7/18/2010. http://www.denverpost.com/search/ci_15536725. The article notes the following: “Seven top executives at Qwest stand to reap more than **\$110 million in cash and stock** from the Denver-based company’s proposed merger with CenturyLink, according to a new regulatory filing.” (Emphasis added.)

²⁵ Ankum Direct at pp. 8-9; see also p. 13.

1 **Q. DOES THIS LACK OF CHOICE EXTEND TO CERTAIN RETAIL**
2 **CUSTOMERS OF THE COMPANIES, AS WELL AS CLECS?**

3 A. Yes. My Direct Testimony generally focuses on the circumstances confronted by
4 CLECs operating in the Companies' territory, but I also refer to the fact that there
5 are "retail customers in *captive segments* of retail markets [that] have little or no
6 choice."²⁶ While Mr. Brigham appears to deny the existence of any captive retail
7 customers,²⁷ the latest FCC report on local telephone competition²⁸ indicates that
8 there are still areas in Arizona where there are no alternative landline providers.²⁹
9 But even in areas in which alternative landline providers do operate, not all
10 customers, particularly residential customers, are likely to have access to the
11 alternative provider(s). Thus, the FCC report demonstrates that a significant
12 fraction of Arizona retail landline consumers remain captive customers of their
13 ILEC.

14 In any event, whether considering captive wholesale customers (CLECs) or retail
15 customers (those without alternatives to the Companies' wireline services), it is
16 the distinction between voluntary and involuntary participation in the proposed
17 merger's risks that is central to the analysis of various stakeholder groups' risk-

²⁶ *Id.* at p. 9, lines 7-8 (emphasis added).

²⁷ Brigham Rebuttal at pp. 11-12. Mr. Brigham falsely implies that I have claimed that CenturyLink has captive retail customers in Arizona (*id.*, at p. 12, lines 9-12), whereas in reality I have explicitly noted that CenturyLink has no local exchange operations in the state (see Ankum Direct at p. 48, lines 12-13); thus my point is focused on *Qwest's* captive retail customers in Arizona.

²⁸ See, FCC Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition: Status as of June 30, 2009, released September 2010 (FCC Local Competition Report).

²⁹ *Id.*, at Table 20 (showing that 7% of zip codes in Arizona have no alternative wireline or VOIP service provider). The FCC methodology is highly conservative, in that it counts a zip code as having an alternative supplier if at least one residential or business end user in the zip code is served by a CLEC, and does not consider the geographic reach of the provider within the zip code area. *Id.* at p. 1, fn. 3.

1 return profiles, the point which Mr. Brigham entirely misses. Thus, contrary to
2 Mr. Brigham's erroneous claim, my analysis of the asymmetry in the risk-return
3 profiles between various stakeholders is sound.

4 **Q. ON THE SUBJECT OF RISKS, MR. GLOVER OBSERVES THAT YOU**
5 **AND OTHER INTERVENORS HAVE CITED TO THE "RISK FACTORS"**
6 **DISCUSSION CONTAINED IN CENTURYLINK'S SEC FORM 4-A**
7 **FILED JULY 16, 2010. MR. FERKIN CONTENDS THAT "...THE**
8 **DISCLOSURES ARE NOT INTENDED TO SUGGEST THAT THE RISKS**
9 **ARE LIKELY OUTCOMES."**³⁰ **DOES THIS MEAN THAT THE**
10 **COMMISSION CAN SIMPLY DISCOUNT OR IGNORE THOSE**
11 **IDENTIFIED RISKS?**

12 **A.** No. In its Form S-4A filing, CenturyLink identified specific, concrete risks that
13 are associated with the proposed merger,³¹ even if it did not assign probabilities of
14 occurrence to them. The fact remains that the "Risk Factors" discussion directly
15 contradicts CenturyLink's claims before this Commission that there are *no*
16 potential harms that could result from the merger.³² Surely, if it is important to

³⁰ Glover Rebuttal at p. 26, lines 9-10.

³¹ See my Direct Testimony at p. 55, where I list some of the specific risks that CenturyLink described in the Form S-4A filing.

³² See McMillan Direct at p. 16; see also, Arizona telephone operating subsidiaries of Qwest Communications International, Inc. ("QCII") Qwest Corporation ("QC"), Qwest Communications Company LLC ("QCC"), and Qwest LD Corp., ("QLDC") (collectively "Qwest") and the Arizona telephone operating subsidiaries of CenturyTel, Inc. ("CenturyLink"), Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, (collectively "CenturyLink"), Joint Notice and Application for Expedited Approval of Proposed Merger, filed May 13, 2010 ("Arizona Joint Application"), at p. 10, lines 8-9 ("The Transaction...will provide benefits to consumers of the combined company without *any countervailing harms.*" -- emphasis added).

1 forewarn the financial community of potential harms, it is important to forewarn
2 the Commission.

3 Moreover, the Commission should bear in mind that some of these types of
4 identified risks did in fact come to pass in the cases of the Carlyle-Hawaiian
5 Telcom and FairPoint-Verizon transactions discussed in my Direct Testimony
6 (pages 25-38), and that of Mr. Gates. For example, FairPoint's Form S-4A before
7 the shareholder vote on the FairPoint-Verizon transaction included the following
8 discussion of "Risk Factors":

9 The integration of FairPoint's and Spinco's businesses may not be
10 successful. The acquisition of the Spinco [Verizon] business is the
11 largest and most significant acquisition FairPoint has undertaken.
12 FairPoint's management will be required to devote a significant
13 amount of time and attention to the process of integrating the
14 operations of FairPoint's business and Spinco's business, which
15 will decrease the time they will have to service existing customers,
16 attract new customers and develop new services or strategies. Due
17 to, among other things, the size and complexity of the Northern
18 New England business and the activities required to separate
19 Spinco's operations from Verizon's, FairPoint may be unable to
20 integrate the Spinco business into its operations in an efficient,
21 timely and effective manner. FairPoint's inability to complete this
22 integration successfully could have a material adverse effect on the
23 combined company's business, financial condition and results of
24 operations.³³

25 The integration of FairPoint's and Spinco's businesses may present
26 significant systems integration risks, including risks associated
27 with the ability to integrate Spinco's customer sales, service and
28 support operations into FairPoint's customer care, service delivery
29 and network monitoring and maintenance platforms.³⁴

³³ FairPoint Communications SEC Form S-4A, filed July 10, 2007, at p. 25 (emphasis removed).

³⁴ *Id.*, at p. 26 (emphasis removed).

1 The Direct Testimony offered by Mr. Gates and myself explains the parallels
2 between the FairPoint-Verizon transaction and the proposed CenturyLink-Qwest
3 merger, and describes the harms to consumers and CLECs that resulted as these
4 previously-identified (albeit not quantified) risks did in fact become an
5 unfortunate reality.³⁵ Accordingly, as I have recommended,³⁶ the Commission
6 should heed the lessons of the Carlyle-Hawaiian Telcom and FairPoint-Verizon
7 experiences and ensure that appropriate safeguards are adopted in the instant
8 proceeding to ensure that similar harms will not occur in Arizona.

9 **Q. MR. HUNSUCKER (PAGE 5) AND MR. BRIGHAM (PAGE 23) CLAIM**
10 **THAT CLECS WILL BENEFIT FROM A FINANCIALLY STRONGER**
11 **MERGED COMPANY. DO YOU AGREE?**

12 A. No, I have seen no evidence from the Companies to support this claim – only
13 unsupported assertions. I do acknowledge that CLECs *could* benefit from a
14 financially stronger Merged Company, *but only if* the greater financial strength
15 were directed to, among other things, improving wholesale services and
16 associated wholesale customer support. However, there is no evidence that the
17 post-merger company, contrary to most merger outcomes, will in fact be stronger.
18 Furthermore, neither witness has offered any explanation of how a financially
19 stronger Merged Company in this instance would confer specific benefits on
20 CLECs. Indeed, the information provided by the Joint Applicants in this
21 proceeding suggests that just the opposite is true. For example, the Joint

³⁵ See, e.g., my Direct Testimony at pp. 25-36 and Gates Direct at pp. 87-100.

³⁶ Ankum Direct at pp. 37-38.

1 Application states that “[a] financially stronger company can...compete
2 against...CLECs...”³⁷ Again, I do not object to robust competition between the
3 Merged Company and CLECs as long as the competition is fair.³⁸ However, I
4 cannot see how that purported financial strength benefits CLECs – especially
5 given that, as Mr. Gates explains, the Joint Applicants have not agreed to reflect
6 the Merged Company’s increased efficiencies in its relationships with its
7 wholesale customers or even to maintain the products, services or rates that
8 CLECs purchase from Qwest today.

9 **Q. MR. HUNSUCKER CLAIMS³⁹ THAT CLECS WOULD ALSO BENEFIT**
10 **FROM THE MERGED COMPANY’S GAINS IN INTERNAL**
11 **OPERATING EFFICIENCIES ASSOCIATED WITH WHOLESALE**
12 **SERVICES. IS THAT NECESSARILY TRUE?**

13 A. No. Mr. Hunsucker is once again making a vague assurance without any factual
14 support. Because the Joint Applicants have supplied no plans or commitments
15 with respect to the going-forward treatment of CLEC-oriented wholesale services
16 and associated OSS systems, there is no way for the Commission or anyone else
17 to know what wholesale services operating efficiencies the Merged Company may
18 realize, if any. Indeed, the enormous work that it will require to harmonize and
19 integrate the myriad OSS systems of CenturyLink and Qwest could distract from
20 and defer (or even entirely eliminate) efficiency gains from more straightforward

³⁷ Arizona Joint Application at p. 14, lines 13-15.

³⁸ See Ankum Direct at p. 93.

³⁹ Hunsucker Rebuttal at pp. 61-62.

1 evolutionary improvements to those separate systems that might have been
2 undertaken without the merger transaction

3 Clearly, the extent to which CLECs could benefit from such internal operating
4 efficiencies of the Merged Company would vary greatly depending upon the
5 specific process or system affected. Some efficiency improvements in the
6 Companies' OSS systems would clearly have no benefit to the wholesale service
7 performance experienced by the CLECs. For example, if the Merged Company
8 found a much cheaper way to store and access its loop plant records than the
9 status quo, that could reduce its costs and improve its operating efficiencies, but
10 without any effect on, or benefit to, the wholesale services as experienced by the
11 CLECs. On the other hand, CLECs could be harmed if the Merged Company
12 should find it more "efficient" and less costly to cut back on the staffing of its
13 wholesale services support centers, slowing responses and increasing CLEC
14 customers' waiting times for customer queries and trouble resolutions. The latter
15 is exactly the kind of wholesale service change that the CLECs are concerned
16 about, and which is addressed by Condition 18 of the Joint CLECs' proposed
17 conditions.

18 ***C. The Joint Applicants' witnesses ignore the fact that the***
19 ***concerns that they characterize as "CLEC speculations" are***
20 ***grounded in comprehensive and in-depth analysis.***

21 **Q. HOW HAVE THE JOINT PETIONERS' WITNESSES CHARACTERIZED**
22 **YOUR ANALYSIS OF THE POTENTIAL HARMS TO CLECS AND THE**

1 **PUBLIC INTEREST THAT MAY ARISE FROM THE PROPOSED**
2 **MERGER?**

3 A. In their Rebuttal Testimony, Mr. Hunsucker on behalf of CenturyLink, and Mr.
4 Brigham on behalf of Qwest, characterize my analysis of potential merger harms
5 as “speculative” and “unsupported.”⁴⁰ Mr. Brigham declares that he is “struck by
6 the highly-speculative and unsupported nature of Dr. Ankum's and Mr. Gates'
7 testimony regarding how this merger will impact the competitive landscape in
8 Arizona.”⁴¹ He opines that Mr. Gates and I “speculate that the proposed
9 transaction will harm competition, but this speculation is not supported by any
10 evidence.”⁴²

11 **Q. HOW DO YOU RESPOND TO THESE CHARACTERIZATIONS OF**
12 **YOUR TESTIMONY?**

13 A. As the Commission can see by reviewing my 200+ pages of Direct Testimony and
14 Exhibits in this proceeding, my conclusions concerning the proposed merger's
15 potential harms to CLECs and the public interest are based upon a comprehensive
16 and in-depth analysis. The review and analysis in my direct testimony includes:

- 17 • Review of the economic literature concerning merger motivations and
18 success/failure rates;
- 19 • Analysis of the unique aspects of telecommunications and ILEC merger
20 transactions;
- 21 • Review and assessment of prior telecommunications and ILEC mergers
22 and why they succeeded/failed;

⁴⁰ *Id.* at pp. 11-12, Brigham Rebuttal at pp. 4-5.

⁴¹ Brigham Rebuttal at p. 4, lines 6-8.

⁴² *Id.* at p. 4, lines 14-15.

- Evaluation of the specifics of the Joint Applicants' proposed transaction, as much as they have been revealed in the Companies' Joint Petition, prefiled testimony, and discovery responses in Arizona and elsewhere;
- Assessment of the Joint Applicants' incentives and abilities to discriminate against the CLECs with which they compete;⁴³ and
- Review of the Direct Testimony of Mr. Gates, in particular the well-documented evidence it contains concerning past anti-competitive conduct by the Joint Applicants, and how OSS integration failures in the context of prior ILEC mergers demonstrate further potential harms from the Joint Applicants' proposed transaction.

A careful review of my Direct Testimony shows that my conclusions regarding the potential harm to wholesale customers and competition are well-founded and not speculative or unsupported, as suggested by Mr. Hunsucker and Mr. Brigham. To the extent there is uncertainty regarding the impact of this merger, that uncertainty results largely from the Joint Applicants' failure to provide their specific post-merger plans and associated information.

Indeed, it is important to remember that the Joint CLECs' merger conditions have been proposed precisely because of the uncertainties associated with the merger and to prevent or mitigate potential harm from the merger to the extent reasonably possible.

Given the breadth, depth, and detailed nature of the analysis I have presented, the characterization of my testimony by Messrs. Brigham and Hunsucker is clearly unfounded.

⁴³ See Ankum Direct at page 13 and Section V.B, Vertical Effects, pages 42-47.

1 **III. RESPONSE TO JOINT APPLICANTS' TESTIMONY**
2 **CONCERNING GENERAL NEED FOR CONDITIONS**

3 ***A. Contrary to the allegations of Mr. Hunsucker and Ms.***
4 ***Stewart, the Joint CLECs' proposed merger conditions are***
5 ***specifically targeted safeguards intended to mitigate potential***
6 ***harms to competition arising from the merger .***

7 **Q. DO YOU AGREE WITH MR. HUNSUCKER'S SWEEPING**
8 **CHARACTERIZATION OF THE MERGER CONDITIONS PROPOSED**
9 **BY THE CLECS AND ACC STAFF AS "UNNECESSARY"?⁴⁴**

10 A. No, certainly not. Nor do I agree with Ms. Stewart when she dismisses certain
11 specific conditions proposed by the Joint CLECs as "unnecessary."⁴⁵ As
12 demonstrated in my Direct Testimony, where I explain the need for the proposed
13 conditions relating to Wholesale Services Availability (Section VII.A) and Rate
14 Stability (Section VII.B), each of the Joint CLECs' proposed merger conditions
15 addresses a specific potential harm of the merger and offers a targeted means to
16 mitigate that harm. Later in my Surrebuttal Testimony (at pages 31-32), I provide
17 further explanation of how specific conditions similarly criticized by Mr.
18 Hunsucker as not being "legitimate merger-related concerns" do in fact target
19 merger-related potential harms. The fact that many different conditions are
20 needed does not mean that the Joint CLECs view the instant proceeding as an
21 opportunity to address old, unrelated issues, but instead reflects the fact that the

⁴⁴ Hunsucker Rebuttal at p. 4, lines 11-12.

⁴⁵ Stewart Rebuttal at pp. 19, 21, and 29.

1 merger has the potential to affect virtually every aspect of the Joint Applicants'
2 business relationship with their CLEC wholesale customers.⁴⁶

3 **Q. HAS THE ACC STAFF ALSO FOUND THAT CONDITIONS ARE**
4 **NECESSARY PRIOR TO ANY COMMISSION APPROVAL OF THE**
5 **MERGER?**

6 A. Yes. Mr. Fimbres has stated that "Staff recommends that the Application be
7 denied unless all of Staff's conditions are adopted."⁴⁷ Contrary to the Joint
8 Applicants' position that no merger conditions are needed, Staff has proposed a
9 set of 47 conditions that it believes the Commission should adopt in order to find
10 the CenturyLink-Qwest merger in the public interest.⁴⁸ Staff's proposed
11 conditions fall into six categories: Merger Costs, Regulatory, Retail Operations,
12 Wholesale Operations, Financial, and Reporting. The categories of Merger Costs,
13 Regulatory, and Wholesale Operations contain the conditions that would most
14 directly impact Qwest's wholesale services and operations. Mr. Fimbres offers
15 the following justifications for adoption of the conditions in those three
16 categories:

17 The conditions with respect to 'merger costs' are designed to prevent
18 merger and one time transactional costs from being passed onto Arizona
19 ratepayers or Qwest's wholesale customers.⁴⁹

20
21 The regulatory conditions are designed to ensure that the Merged
22 Company will continue to comply with Section 271 obligations in Arizona

⁴⁶ See the list of wholesale customer-impacting areas that I provided on p. 5 of my Surrebuttal Testimony.

⁴⁷ Fimbres Direct at p. 26, lines 6-7.

⁴⁸ See *id.* at pp. 26-27; Staff's proposed conditions are set forth in Attachment 1 to Mr. Fimbres' testimony.

⁴⁹ Fimbres Direct at p. 26, lines 14-16.

1 and also put in place additional regulatory requirements to ensure that the
2 Commission's overall jurisdiction will not be impacted by the proposed
3 merger.⁵⁰
4

5 Staff is also proposing a significant number of conditions relating
6 to Qwest's wholesale operations. These conditions are designed in
7 part to ensure that the merger will have no adverse impact upon
8 competition in Arizona.⁵¹

9 This testimony confirms that Staff recognizes the risks the merger would create
10 for competition in Arizona, and understands that having the Commission impose
11 conditions prior to merger approval is the best way to reduce the identified risks.
12 As I shall discuss later in my testimony, Staff has proposed many conditions that
13 are similar in design and intent to those offered by the Joint CLECs, as well as
14 others that are complementary to the Joint CLECs' proposal.

15 ***B. Mr. Brigham confuses the status of competition in retail vs.***
16 ***wholesale markets and fails to acknowledge that Qwest***
17 ***continues to dominate wholesale markets throughout its***
18 ***service territory.***

19 **Q. DR. ANKUM, DO YOU AGREE WITH MR. BRIGHAM'S ASSERTIONS**
20 **THAT THE "POST-MERGER COMPANY CANNOT AFFORD, AND HAS**
21 **NO INCENTIVE, TO DEGRADE OSS OR OFFER INFERIOR SERVICE**
22 **QUALITY BECAUSE CUSTOMERS—INCLUDING CLECS—HAVE**
23 **COMPETITIVE OPTIONS"?⁵²**

⁵⁰ *Id.* at p. 26, lines 16-19.

⁵¹ *Id.* at p. 26, lines 23-26.

⁵² Brigham Rebuttal at p. 7, lines 15-17.

1 A. No. In support of that assertion, Mr. Brigham cites to ‘competitive options from
2 other facilities-based providers such as cable and wireless companies,’⁵³ but of
3 course those inter-modal options relate only to *retail service markets* (and only in
4 limited circumstances), and do not in any way represent “competitive options”
5 available in the *wholesale service markets* upon which CLECs depend. Mr.
6 Brigham is simply obfuscating the issue by confusing these two distinct markets.
7 Indeed, this Commission has recently reached conclusions diametrically opposed
8 to those of Mr. Brigham concerning the presence of competitive options in the
9 Arizona wholesale market and the Arizona retail market for business/enterprise
10 services. In March, 2010, the Commission filed comments in the FCC’s
11 proceeding addressing Qwest’s request for forbearance in the Phoenix MSA.⁵⁴
12 Based on data collected by its Staff, the Commission concluded that viable
13 wholesale alternatives were not yet available in the Phoenix MSA, stating that:

14 **Viable Wholesale Alternatives are Not Available Yet.**

15 The FCC found in its *Qwest 4 MSA Order* that “[t]he record does
16 not reflect any significant alternative sources of wholesale inputs
17 for carriers in the four MSAs [including the Phoenix MSA].” The
18 data collected by the ACC Staff indicates that nothing has changed
19 in this regard.⁵⁵

20 With respect to the retail business/enterprise market in Arizona, the Commission
21 concluded that “[t]he data collected by the ACC indicates that Qwest is by far the

⁵³ *Id.* at p. 7, lines 10-11. While I also reject the view of Mr. Brigham that wireless service is a full “competitive option” to ILEC wireline service, that debate pertains to the retail marketplace only and has nothing to do with the wholesale services market for CLEC inputs.

⁵⁴ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) in the Phoenix Metropolitan Statistical Area*, WC Docket No. 09-135, Late-Filed Reply Comments of the Arizona Corporation Commission, March 2, 2010.

⁵⁵ *Id.* at p. 23 (footnote deleted, emphasis in original).

1 dominant facilities-based carrier yet in the business or enterprise market.”⁵⁶ The
2 Commission specifically rebutted Qwest’s claims with respect to availability of
3 alternative last-mile connections, finding that:

- 4 • “[t]he extensive intramodal non-Qwest facilities competition that Qwest
5 cites to in its Petition for the business market is not borne out by the data
6 collected by the ACC;”
- 7 • “[N]o carrier other than Qwest has deployed significant last mile
8 connectivity to multi-tenant complexes where many of the business
9 customers are located;” and that
- 10 • “No amount of rhetoric can replace the fact that alternative last mile
11 facility providers are not an option yet for much of the Phoenix MSA
12 business community.”⁵⁷

13 If Qwest cannot make the case for significant alternative sources of supply for
14 last-mile connectivity to business/enterprise customers in the largest urbanized
15 area in Arizona (the Phoenix MSA), then it can hardly support such claims for the
16 entirety of the state.

17 Other state regulatory commissions have also concluded within the past year that
18 Qwest remains the dominant supplier of wholesale services in its territory. The
19 Minnesota Public Utilities Commission observed in its December 23, 2009, Order
20 adopting a new AFOR for Qwest that:

21 While the 1996 Act has succeeded in introducing a measure of
22 competition into the retail market, ***Qwest remains the dominant***
23 ***provider of wholesale services***. And regardless of the state of
24 competition, each telephone company continues to exercise a
25 monopoly over routing calls over the public switched

⁵⁶ *Id.* at p. 21.

⁵⁷ *Id.* at pp. 21-22.

1 telecommunications network to its own retail customers - that is,
2 over switched access service.⁵⁸

3 The continuing reality of Qwest's wholesale services dominance completely
4 undercuts Mr. Brigham's assertion that the Post Merger Company would have no
5 incentive to diminish its wholesale service quality to CLECs. To the contrary, as
6 I have already explained,⁵⁹ the very fact that CLECs operating in the Qwest
7 region are highly dependent upon Qwest's wholesale services to access their
8 customers creates strong disincentives to provide CLECs with quality, reasonably
9 priced, nondiscriminatory wholesale services and network access. In the absence
10 of significant alternative sources of supply for those inputs, CLECs cannot simply
11 migrate away from Qwest's network, as Mr. Brigham suggests, and instead will
12 suffer harms to the extent that there is any decline in the scope, quality or terms of
13 the post-merger wholesale services provided by the merged company.

⁵⁸ Minnesota PUC Docket No. P-421/AR-09-790, Order Approving Qwest's Alternative Regulation Plan as Modified (December 23, 2009), at p. 5 (emphasis supplied).

⁵⁹ Ankum Direct at p. 13.

1 ***C. The U.S. Department of Justice's termination of its review of***
2 ***the Companies' merger transaction does not lessen the need***
3 ***for a thorough Commission review of the merger's impacts on***
4 ***CLECs and other affected stakeholders.***

5 **Q. MR. BRIGHAM OBSERVES THAT THE DEPARTMENT OF JUSTICE**
6 **(DOJ) AND FEDERAL TRADE COMMISSION (FTC) HAVE CLEARED**
7 **THE CENTURYLINK-QWEST MERGER FROM AN ANTITRUST**
8 **PERSPECTIVE.⁶⁰ WHAT SPECIFIC ACTIONS DID THE DOJ**
9 **UNDERTAKE IN THAT REGARD?**

10 A. At the Joint Applicants' request, the DOJ terminated the waiting period for review
11 of the merger under the Hart Scott Rodino Act. While I am not an attorney
12 offering a legal opinion, my understanding is that the early termination of a
13 merger review is made pursuant to 16 C.F.R. Section 803.11, which requires in
14 totality the following findings by the DOJ: that all required notifications have
15 been filed; no additional information or documentary material will be requested;
16 and a determination by the DOJ that it does not intend to take any further action
17 within the waiting period. Thus Mr. Brigham's conclusion that the termination
18 meant that the DOJ "...determined there will not be a significant erosion of
19 competition resulting from the merger"⁶¹ is an overstatement.

20 **Q. DOES THAT CLEARANCE MEAN THIS COMMISSION HAS NO NEED**
21 **TO EVALUATE THE PROPOSED MERGER'S POTENTIAL IMPACTS**
22 **ON CLECS IN ARIZONA?**

⁶⁰ Brigham Rebuttal at p. 25.

⁶¹ *Id.* at p. 25, lines 8-9.

1 A. No. As I pointed out in my Direct Testimony,⁶² the DOJ's antitrust review differs
2 from and is narrower than the Commission's public interest evaluation. The
3 DOJ's role in merger proceedings is to investigate a proposed merger to the point
4 that the Assistant Attorney General in charge of the DOJ's Antitrust Division can
5 determine if the evidence warrants prosecution of an antitrust case against the
6 merging entities.⁶³ My understanding is that nothing in the statutes granting this
7 prosecutorial authority to the DOJ either states, or indicates, that the DOJ's
8 decision should supplant or even guide a regulatory body's public interest
9 determination regarding the proposed merger.

10 As a general matter, despite the fact that the CenturyLink-Qwest transaction is
11 being scrutinized by multiple government agencies, this Commission should not
12 lose sight of the fact that it is the only government authority specifically tasked
13 with determining whether the proposed merger is in the public interest under
14 Arizona law, and thus with due consideration of Arizona-specific circumstances.
15 This Commission should not simply defer to other agencies, as Mr. Brigham
16 seems to imply, but instead should exercise its independent judgment and
17 authority with respect to the Joint Petition, as it always has in merger proceedings
18 such as this.

⁶² Ankum Direct at p. 23.

⁶³ 15 U.S.C. Sections 18, 18a.

1 **IV. RESPONSE TO JOINT APPLICANTS' TESTIMONY**
2 **CONCERNING SPECIFIC CONDITIONS PROPOSED**
3 **BY THE JOINT CLECS**

4 **A. *The specific Joint CLEC proposed conditions explained in my***
5 ***Direct Testimony remain essential protections and are not***
6 ***undermined by the rebuttal testimony offered by the Joint***
7 ***Applicants' witnesses.***

8 **Q. DR. ANKUM, HAVE YOU REVIEWED THE REBUTTAL TESTIMONY**
9 **OFFERED BY THE CENTURYLINK AND QWEST WITNESSES**
10 **CONCERNING THE SPECIFIC MERGER CONDITIONS THAT YOU**
11 **ARE RECOMMENDING?**

12 A. Yes, I have. Section VII of my Direct Testimony (pages 67-93) explained the
13 basis for the Joint CLECs' proposed conditions relating to wholesale rate stability
14 (Conditions number 2, 3, and 7 as numbered in Mr. Gates' Exhibit TG-8) and the
15 availability of wholesale services (Conditions number 1, 6, 8, 9, 10, 12, 14 and
16 28). Mr. Hunsucker, on behalf of CenturyLink, and Ms. Stewart, on behalf of
17 Qwest, have addressed some of those particular conditions in their respective
18 Rebuttal Testimony.⁶⁴

⁶⁴ See Hunsucker Rebuttal at pp. 37-40 (addressing Conditions 6 and 8), pp. 40-46 (addressing Conditions 9 and 10), pp. 47-48 (addressing Conditions 12 and 14), pp. 54-55 (addressing Condition 28), and pp. 64-66 (addressing Conditions 1, 2, 3, and 7); Stewart Rebuttal at pp. 9-12 (addressing Conditions 2, 3, and 7) and pp. 16-18 (addressing Condition 14).

1 **Q. DOES THEIR TESTIMONY CHANGE YOUR OPINION THAT THOSE**
2 **MERGER CONDITIONS SHOULD BE ADOPTED BY THE**
3 **COMMISSION IF IT DECIDES TO APPROVE THE MERGER?**

4 A. No. None of the Joint Applicants' Rebuttal Testimony causes me to alter my
5 prior recommendations. I continue to recommend that, if the Commission
6 approves the proposed merger, it should impose all of the Joint CLEC conditions
7 that I have recommended, as well as those supported by Mr. Gates.

8 ***B. Conditions 2, 3, and 7.***

9 **Q. WHAT IS YOUR RESPONSE TO MS. STEWART'S ARGUMENT⁶⁵ THAT**
10 **THERE IS NO NEED FOR THE WHOLESALE RATE STABILITY**
11 **CONDITIONS (NUMBERS 2, 3, AND 7) BECAUSE THE COMMISSION**
12 **ALREADY HAS IN PLACE A PROCESS FOR DETERMINING RATES**
13 **FOR SECTION 251-RELATED SERVICES?**

14 A. As I discussed in my Direct Testimony,⁶⁶ there is a serious risk that the Merged
15 Company will attempt to recover merger costs through increases in wholesale
16 rates. To preclude this sort of recovery, a merger commitment that caps rates for
17 a meaningful period following the merger is essential for several reasons. First,
18 recovering merger costs through wholesale rate increases would be inappropriate
19 for the reasons stated in my Direct Testimony. Indeed, regulators have
20 historically rejected any such recovery.⁶⁷ Second, post-hearing wholesale

⁶⁵ Stewart Rebuttal at p. 11.

⁶⁶ Ankum Direct at pp. 44-45 and 89-90.

⁶⁷ *Id.* at p. 91; see especially footnotes 147 and 148 which refer to the following decisions by the Illinois Commerce Commission and Oregon PUC: *In the Matter of Verizon Communications Inc. and*

1 rate/UNE cost proceedings would be an expensive, time-consuming, and
2 uncertain way of attempting to prevent the Joint Applicants from improperly
3 recovering merger costs from wholesale customers/competitors. Indeed, those
4 merger-related costs could be buried in complex cost-models that allow them to
5 find their way into wholesale rates undetected. Contrary to Ms. Stewart's view,
6 the Commission cannot simply rely upon its existing rate-setting and complaint
7 procedures to ensure that the safeguards contemplated in Conditions 2, 3, and 7
8 are actually achieved. By refusing to make an up-front commitment to refrain
9 from recovery of merger transaction-related costs from wholesale rates and
10 CLECs, the Joint Applicants would be shifting the burden to the Commission, its
11 Utilities Division Staff, and CLEC intervenors in such proceedings to identify and
12 root out those costs, which as I explained in my Direct Testimony, regulators
13 should not and traditionally have not included in merging ILECs' wholesale or
14 retail rates as a matter of principle. Now is the time for the Commission to
15 implement this principle by adopting Conditions 2 and 3, not in a future rate
16 proceeding where it can be lost in the myriad of other costing and rate-setting
17 issues.

Frontier Communications COT. Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc., Order Granting Joint Application with Conditions, Oregon PUC Docket No. UM 1431, Order No. 10-067, February 24, 2010 ("Oregon PUC Frontier-Verizon Order"); Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act, Order, ICC Docket No. 09-0268, April 21, 2010 ("Illinois CC Frontier-Verizon Order"); In the Matter of Embarq Cop and CenturyTel, Inc. Joint Application for Approval of Merger between the two companies and their regulated subsidiaries, Order Granting Joint Application with Conditions, Oregon PUC Docket No. UM 1416, Order No. 09-169, May 22, 2009 ("Oregon PUC CenturyTel-Embarq Order").

1 **Q. HAS STAFF ALSO CONCLUDED THAT SPECIFIC MERGER**
2 **CONDITIONS SHOULD BE IMPOSED TO PREVENT THE RECOVERY**
3 **OF MERGER-RELATED COSTS THROUGH THE MERGED**
4 **COMPANY'S RATES?**

5 A. Yes. As I observed earlier in my testimony, Staff's proposed "Merger Costs"
6 Conditions 1-3 are "designed to prevent merger and one time transactional costs
7 from being passed onto Arizona ratepayers or Qwest's wholesale customers."⁶⁸
8 Staff's proposed Condition 1 is very similar to Joint CLECs' proposed Condition
9 2, as both conditions are designed to ensure that the Merged Company does not
10 recover one-time transfer, re-branding and other transaction-related costs from
11 wholesale customers. In fact, Staff's proposed condition is broader in scope in
12 that it extends that prohibition to Arizona end-user retail rates as well. On the
13 other hand, the Joint CLECs' proposed Condition 3 extends this protection in
14 another way, by prohibiting recovery through rates of management cost increases
15 attributable to the merger. In any event, Staff's independent determination that
16 such safeguards are essential repudiates CenturyLink's claims that wholesale rate
17 stability conditions are unnecessary.

18 **Q. ARE QWEST SERVICES AND RATES OUTSIDE OF THE SECTION 251**
19 **RATE-SETTING PROCESS ALSO AT RISK UNLESS SPECIFIC**
20 **MERGER CONDITIONS ARE IMPOSED?**

⁶⁸ Fimbres Direct at p. 26, lines 14-16.

1 A. Yes, there is a risk that the Merged Company may seek to recover merger-
2 transaction related costs or impose other unwarranted wholesale rate increases or
3 changes in terms outside of the Section 251 rate-setting process referred to by Ms.
4 Stewart. Perhaps the best demonstration that this concern is well-founded is
5 Qwest's recent unilateral change to volume and term discounts for DS1 and DS3
6 circuits in its Regional Commitment Program (RCP), that resulted in terms less
7 favorable to CLECs. None of the Companies' witnesses have responded to (or
8 even acknowledged) my Direct Testimony concerning this change to a non-
9 Section 251 wholesale services agreement.⁶⁹ Clearly, however, constraining this
10 type of conduct must go beyond the Commission's existing Section 251-related
11 procedures.

12 **Q. HOW DO YOU RESPOND TO MR. HUNSUCKER'S ASSERTIONS**
13 **THAT "THE CLECS DO NOT ATTEMPT TO PORTRAY THESE**
14 **CONDITIONS [CONDITIONS 2, 3 AND 7] AS LEGITIMATE MERGER**
15 **CONCERNS" AND THAT THEY ARE REALLY "ATTEMPTS...TO**
16 **INCREASE CLEC PROFITABILITY"?⁷⁰**

17 A. Those assertions are erroneous. Contrary to Mr. Hunsucker's claim that
18 Conditions 2 and 3 were not presented in my Direct Testimony as "legitimate
19 merger concerns," my testimony explains clearly that those conditions specifically
20 target the issue of the Merged Company's recovery of *merger transaction-related*

⁶⁹ Ankum Direct at pp. 91-93.

⁷⁰ Hunsucker Rebuttal at p. 65, lines 11-12 and p. 65, lines 15-16.

1 *costs.*⁷¹ Similarly, pages 89-93 of my Direct Testimony specifically explain why
2 Conditions 2, 3, and 7 are necessary *in the context of the merger.*⁷² Mr.
3 Hunsucker has failed to acknowledge that testimony.

4 Mr. Hunsucker also mischaracterizes the intent of Conditions 2, 3, and 7 by
5 alleging that “[t]hese proposed conditions appear to be attempts to circumvent
6 applicable law and rules to increase CLEC profitability through terms CLECs are
7 unlikely to gain under the current regulatory reviews and processes.”⁷³ In similar
8 fashion, Ms. Stewart alleges that Condition 7 is an “attempt to change the rate
9 making processes that are currently in place for these products and services.”⁷⁴

10 To the contrary, as I explained in my Direct Testimony, these conditions are
11 intended to establish *wholesale rate stability during the merger transition period,*
12 and are not seeking any wholesale rate decreases or any new, favorable wholesale
13 services terms or conditions. As stated in my Direct Testimony:

14 Wholesale rates should, if anything, decrease after the merger.
15 Because the company’s overall cost structure should decrease to
16 the extent synergy savings are achieved post-merger, wholesale
17 rates – which would be based on the cost structure of the Merged
18 Company – should decrease as well. *However, at this point,*
19 *CLECs are not seeking rate reductions, but instead taking the*
20 *conservative position that rates should not increase for at least*
21 *the Defined Time Period (Condition 7).*⁷⁵

⁷¹ Ankum Direct at p. 89.

⁷² For example, at p. 90, lines 7-10 of my Direct Testimony, I conclude that Condition 7 “provides a degree of protection for captive wholesale customers that the Merged Company will not seek to increase their rates (or create new rate elements) during the Merged Company’s pursuit of synergies and revenue enhancements.”

⁷³ Hunsucker Rebuttal at p. 38, lines 1-3.

⁷⁴ Stewart Rebuttal at p. 12, lines 6-7.

⁷⁵ Ankum Direct at p. 90, lines 2-7 (emphasis added).

1 **Q. IS THERE EVIDENCE THAT SUGGESTS CENTURYLINK MAY SEEK**
2 **RATE INCREASES FOR WHOLESALE SERVICES AFTER THE**
3 **MERGER HAS CLOSED?**

4 A. Yes. In his Surrebuttal Testimony, Mr. Gates documents how CenturyLink has
5 previously raised rates for other ILEC operations that it had acquired, namely in
6 1998 when CenturyLink unilaterally raised the rates for local and access services
7 in nineteen Wisconsin exchanges after acquiring them from Ameritech.⁷⁶ Far
8 from being some sort of ploy to “increase CLEC profitability” as Mr. Hunsucker
9 alleges, Condition 7 is specifically targeted to prevent precisely this sort of
10 conduct post-merger with respect to the wholesale services upon which CLECs
11 depend.

12 The same is true for the term and volume discount plans specifically addressed in
13 Condition 7, subpart a. This subpart seeks their continuation “without any
14 changes to the rates, terms, or conditions of such plans”⁷⁷ – and does not grant
15 CLECs any new, more favorable terms or conditions, as Mr. Hunsucker implies.
16 The thrust of Condition 7 and its subparts is to maintain the status quo
17 competitive balance between the Joint Applicants and the CLECs they serve
18 throughout the merger transition period. This general goal applies with equal
19 force to the Wholesale Service Availability conditions that I am recommending,
20 as I shall now explain.

⁷⁶ Gate Surrebuttal Testimony, at pp. 33-34.

⁷⁷ Exhibit TG-8 at p.5.

C. Conditions 1, 6, 8, 9, 10, 12, 14 and 28

Q. DID YOUR DIRECT TESTIMONY SET FORTH THE JOINT CLECS' PROPOSED CONDITIONS RELATING TO WHOLESALE SERVICE AVAILABILITY AND EXPLAIN WHY THEY SHOULD BE ADOPTED BY THE COMMISSION, IF IT APPROVES THE CENTURYLINK-QWEST MERGER?

A. Yes. The Wholesale Services Availability conditions (Conditions number 1, 6, 8, 9, 10, 12, 14 and 28) were set forth and explained in Section VII-A of my Direct Testimony.⁷⁸ As observed therein, these conditions would ensure that the Merged Company will continue to make available the wholesale services that Qwest currently provides during the merger transition period (as measured by the Defined Time Period set forth in Exhibit TG-8).

Q. HAVE THE JOINT APPLICANTS' WITNESSES OFFERED ANY RELEVANT REBUTTAL TO CONDITION 1?

A. No. Mr. Hunsucker mistakenly categorized Condition 1, which concerns the continued availability of wholesale services, with the Wholesale Rate Stability conditions.⁷⁹ Thus, Mr. Hunsucker's criticism of Condition 1 as a rate-related condition is misplaced and should be disregarded.⁸⁰ No other Joint Applicant witnesses address Condition 1.

Q. HAS STAFF PROPOSED A CONDITION SIMILAR TO CONDITION 1?

⁷⁸ See Ankum Direct, at pp. 68-89.

⁷⁹ Hunsucker Rebuttal at p. 64.

⁸⁰ *Id.* at p. 64. I have already rebutted Mr. Hunsucker's claims concerning rate-related conditions in my testimony above.

1 A. Yes. Staff's proposed Condition 26 states that "no Qwest wholesale intrastate
2 service offered to competitive carriers as of the merger filing date will be
3 discontinued for two years after closing of the merger, unless approved by the
4 Commission." The primary difference is that Staff would apply a fixed duration
5 of two years, whereas the Joint CLECs' Condition 1 applies the Defined Time
6 Period to be commensurate with the duration of the merger transition period (see
7 my testimony above). Nevertheless, Staff's inclusion of Condition 26 as a
8 necessary condition for merger approval confirms that ensuring continued
9 availability of wholesale services post-merger is a key public interest
10 consideration.

11 **Q. WHAT REBUTTAL HAVE THE JOINT APPLICANTS PROFFERED IN**
12 **RESPONSE TO CONDITION 6, WHICH INVOLVES COMMITMENTS**
13 **THAT THE MERGED COMPANY WILL ASSUME OR TAKE**
14 **ASSIGNMENT OF QWEST'S EXISTING OBLIGATIONS UNDER**
15 **INTERCONNECTION AGREEMENTS (ICAs), TARIFFS,**
16 **COMMERCIAL AGREEMENTS, ETC.?**

17 A. Mr. Hunsucker asserts that Condition 6 is unnecessary because of the structure of
18 the Joint Applicants' proposed transaction, in which the entire Qwest corporate
19 entity is being acquired.⁸¹

20 **Q. DOES THE STRUCTURE OF THE TRANSACTION NEGATE THE**
21 **NEED FOR CONDITION 6?**

⁸¹ *Id.* at p. 37.

1 A. No, it does not. As Mr. Gates and I have already explained in our Direct
2 Testimony, while Qwest will continue to exist and operate as a separate entity as
3 of the day the transaction is consummated, there is no certainty as to the Merged
4 Company's corporate organization beyond that date.⁸² The Joint Applicants have
5 stated that the legacy Qwest entity "will continue to be the only provider of
6 service to the CLECs in Arizona"⁸³ but CenturyLink does not commit to any
7 specified time period for this to continue.

8 In addition, Condition 6 (exclusive of its subparts) requires the Merged Company
9 to take on the obligations of the Assumed Agreements without requiring
10 wholesale customers to execute any documents to effectuate the assumption.
11 CenturyLink does not commit to *not* requiring such document execution
12 (regardless of whether the obligations are considered continuing or assumed).⁸⁴ I
13 explained in my Direct Testimony that this is a real-world concern, as Frontier
14 and Verizon attempted to compel CLECs to accept amendment of their wholesale
15 agreements to reflect certain Frontier processes.⁸⁵ Consequently, Condition 6 is
16 essential to ensure that CLECs' existing ICAs and other contractual and
17 commercial agreements with Qwest are not disrupted by any future, unilateral
18 changes in the Merged Company's corporate organization.

19 **Q. DOES STAFF APPEAR TO RECOGNIZE THE PROBLEM THAT**
20 **CONDITION 6 IS INTENDED TO ADDRESS?**

⁸² Mr. Gates further elaborates on this point in his Surrebuttal Testimony.

⁸³ Hunsucker Rebuttal, at p. 37, lines 11-13.

⁸⁴ *Id.* at p. 37.

⁸⁵ See Ankum Direct at pp. 74-75 and Exhibit AA-6 referenced therein.

1 A. Yes. In fact, Staff has proposed its own version of this condition, Staff proposed
2 Condition 25, which would require (in part) that “the Merged Company shall
3 continue to honor all obligations under Qwest’s current interconnection
4 agreements, tariffs, and other existing contractual arrangements with CLECs.”
5 While there are some language differences between the two, the fact that Staff has
6 proposed a highly similar condition reinforces the importance of Condition 6 as a
7 competitive safeguard.

8 **Q. DO YOU AGREE WITH MR. HUNSUCKER’S CONCLUSION THAT**
9 **CONDITIONS 6 AND 8 HAVE THE EFFECT OF ALLOWING CLECS TO**
10 **UNILATERALLY CHANGE THEIR EXISTING CONTRACT TERMS TO**
11 **EXTEND ICAS, INCLUDING THOSE IN “EVERGREEN” STATUS?⁸⁶**

12 A. No. Mr. Gates’ Surrebuttal Testimony explains how Mr. Hunsucker
13 mischaracterizes the Defined Time Period and how it remains the appropriate
14 time period to apply in Conditions 6 and 8 as elsewhere. Moreover, with respect
15 to Condition 8, Mr. Hunsucker ignores the fact that the terms and conditions
16 under the numerous “evergreen” ICAs between Qwest and CLECs have been
17 acceptable to the signatory companies for extended periods; the fact that Qwest
18 chooses to merge with CenturyLink should not suddenly result in harm to Qwest
19 from their continuance through the merger transition period (the Defined Time
20 Period).⁸⁷ This type of condition is not only reasonable, it has been adopted (with
21 slight variations) by the Illinois Commerce Commission, the Public Utilities

⁸⁶ Hunsucker Rebuttal, at pp. 38-40.

⁸⁷ Ankum Direct at pp. 79-80.

1 Commission of Ohio, and the Oregon Public Utilities Commission as a condition
2 of the Frontier/Verizon merger. Moreover, Mr. Gates explains how Mr.
3 Hunsucker mischaracterizes the Defined Time Period and how it remains the
4 appropriate time period to apply in Condition 8 as elsewhere.

5 **Q. IS MR. HUNSUCKER CORRECT THAT CONDITION 9, WHICH**
6 **COMMITTS THE MERGED COMPANY TO ALLOWING CLECS TO USE**
7 **A PRE-EXISTING ICA AS A BASIS FOR NEGOTIATING A NEW ICA, IS**
8 **UNNECESSARY?**⁸⁸

9 A. No. Mr. Hunsucker's own testimony underscores why Condition 9 is important.
10 Mr. Hunsucker states that: "CenturyLink, however, has the right to propose its
11 suggested structure as well and should not be constrained before the fact from
12 doing so."⁸⁹ This testimony is troubling as it overlooks the multiple, longstanding
13 negotiations being conducted between CLECs and Qwest, which should not be
14 derailed by the proposed transaction.

15 As discussed in my Direct Testimony, while relatively few CLECs have had
16 cause to invest much time and effort to negotiate an ICA with CenturyLink,
17 CLECs are likely to have invested significant time and financial resources in
18 ICAs and negotiations with Qwest. The proposed transaction should not cause
19 these resources to be wasted, potentially forcing negotiations to start from scratch,
20 perhaps based on an entirely new CenturyLink ICA negotiations proposal. A
21 more complete discussion of the reason that Condition 9 is justified is found in

⁸⁸ Hunsucker Rebuttal at p. 40.

⁸⁹ *Id.* at p. 40, lines 10-12.

1 my Direct Testimony,⁹⁰ which also notes that the Oregon PUC applied this
2 condition to the Frontier-Verizon merger.⁹¹ It is also important to recognize that
3 Staff has proposed a similar condition, namely its proposed Condition 30, which
4 states that “the Merged Company shall allow a requesting competitive carrier to
5 use any approved Interconnection Agreement (‘ICA’) in Arizona, as the basis for
6 negotiating a replacement ICA.”

7 **Q. HOW DO YOU RESPOND TO MR. HUNSUCKER’S TESTIMONY IN**
8 **OPPOSITION TO CONDITION 10, WHICH WOULD PERMIT CLECS**
9 **TO OPT INTO ANY OTHER QWEST ICA IN THE SAME STATE?**⁹²

10 A. It is simply not correct, as Mr. Hunsucker claims, that Condition 10 would allow
11 CLECs to “cherry pick” ICA terms.⁹³ In fact, my Direct Testimony notes that
12 “[t]his condition does not allow a carrier to pick-and-choose ICA terms.”⁹⁴

13 Likewise, Mr. Hunsucker’s claim that Condition 10 ignores such issues as
14 differences in technical feasibility, network design and costs between
15 CenturyLink and Qwest⁹⁵ is refuted by the explicit language of the condition:

16 The state commission may require modification of the agreement
17 to the extent that the commission determines that the Merged
18 Company has established that (1) it is not Technically Feasible for
19 the Merged Company to comply with one or more provisions of
20 the agreement or (2) the price(s) set forth in the agreement are
21 inconsistent with TELRIC-based prices in the state in question.⁹⁶

⁹⁰ Ankum Direct at pp. 80-82.

⁹¹ *Oregon PUC Frontier-Verizon Order*, at Attachment 1 (Settlement Conditions), Condition 7.

⁹² Hunsucker Rebuttal at pp. 42-46.

⁹³ *Id.* at p. 43.

⁹⁴ Ankum Direct at p. 83, lines 8-10.

⁹⁵ Hunsucker Rebuttal at p. 43.

⁹⁶ Exhibit TG-8 at p. 6.

1
2 Condition 10 simply builds on the Companies' own claims that, in a post-merger
3 environment, CenturyLink and Qwest will be operating as an integrated entity,
4 capitalizing on the synergies of their combined networks and operations.⁹⁷
5 Condition 10, like the other conditions proposed by the Joint CLECs, is consistent
6 with the Joint Applicant's stated intent to operate post-merger as an integrated
7 entity.⁹⁸

8 As noted in my Direct Testimony, the FCC previously adopted a similar condition
9 in conjunction with the AT&T/BellSouth merger, which required
10 AT&T/BellSouth to make available to any CLEC any ICA (negotiated or
11 arbitrated) to which a AT&T/BellSouth ILEC is a party in any state within the
12 AT&T 22-state footprint, subject to state-specific pricing and technical
13 feasibility.⁹⁹

14 **Q. MR. HUNSUCKER ASSERTS THAT ADOPTING CONDITIONS 12 AND**
15 **14, RELATING TO WAIVER OF THE RIGHT TO SEEK RURAL**
16 **EXEMPTIONS AND RECLASSIFICATION OF WIRE CENTERS,**
17 **WOULD AMOUNT TO "TAK[ING] SHORT CUTS" WITH THE LAW.¹⁰⁰**
18 **DO YOU AGREE?**

19 **A.** No, and I note that neither the FCC nor the Oregon Public Utilities Commission
20 reached that conclusion when adopting similar conditions on other ILEC

⁹⁷ McMillan Direct at p. 9-12.

⁹⁸ See, e.g., Joint Application at pp. 6 and 15-16.

⁹⁹ Ankum Direct at pp. 82-83.

¹⁰⁰ Hunsucker Rebuttal at p. 48, lines 6-7.

1 mergers.¹⁰¹ To the contrary, in its decision approving the Frontier-Verizon
2 merger, the Oregon PUC determined that “the conditions agreed to by the
3 Applicants in the various stipulations filed in this docket,” – including the two
4 analogous to Conditions 12 and 14 – “...combined with additional conditions we
5 impose in this order, sufficiently mitigate the risks of the transaction and help
6 meet the ‘no harm’ public interest standard required for our approval.”¹⁰² The
7 Oregon PUC reached essentially the same conclusion as I did in my Direct
8 Testimony as to why conditions such as numbers 12 and 14 are necessary.¹⁰³

9 **Q. MR. HUNSUCKER ASSERTS THAT CONDITION 28 IS**
10 **UNREASONABLE AND UNNECESSARY BECAUSE “THIS MERGER**
11 **CREATES NO INTERCONNECTION COST TO THE CLECS THAT THE**
12 **CLECS DO NOT ALREADY HAVE TODAY.” DO YOU AGREE WITH**
13 **HIS ASSESSMENT?**¹⁰⁴

14 A. No. As Mr. Gates and I have already explained in our prior testimony, CLECs
15 should have the option of interconnecting at a single point of interconnection
16 (“POI”) per LATA with the Merged Company throughout its expanded footprint,
17 including Arizona. Mr. Gates has also explained how the Joint Applicants have
18 touted the economic benefits that will result from the merger’s combination of the
19 two Companies’ networks.¹⁰⁵ Now when it comes to allowing CLECs to share in

¹⁰¹ See Gates Exhibit TJG-9 at p. 6 (citing to the FCC’s *Verizon-Frontier Merger Order* with respect to Condition 12, the FCC’s AT&T/BellSouth Order with respect to Condition 14, and the *Oregon PUC Frontier-Verizon Order* with respect to both Conditions 12 and 14)..

¹⁰² *Oregon PUC Frontier-Verizon Order*, at p. 1.

¹⁰³ Ankum Direct at p. 4.

¹⁰⁴ Hunsucker Rebuttal at p. 55, lines 3-4.

¹⁰⁵ Gates Direct at pp. 181-182.

1 some of those increased efficiencies, as a single POI per LATA interconnection
2 would afford, the Joint Applicants object. By forcing CLECs to maintain multiple
3 POIs per LATA, even as the Merged Company begins exploiting increased
4 efficiencies of their combined networks, the Joint Applicants could use the merger
5 to unfairly tilt the competitive balance in their favor. If the Commission
6 determines that the merger should be approved, adopting Condition 28 can play
7 an important role in ensuring that the merger does not result in that harm to
8 CLECs and the competitive marketplace.

9 VI. CONCLUSION

10 Q. HAVING REVIEWED THE REBUTTAL TESTIMONY OFFERED BY
11 THE JOINT APPLICANTS AND THE DIRECT TESTIMONY OFFERED
12 BY STAFF, WHAT IS YOUR CONCLUSION?

13 A. The Joint Applicants' Rebuttal Testimony fails to demonstrate that the merger of
14 CenturyLink and Qwest will meet the Commission's public interest standard of
15 review unless appropriate conditions are imposed to mitigate potential merger
16 harms. Staff has also concluded that conditions are essential to any Commission
17 approval of the merger, and has proposed conditions that in many cases are
18 similar or complementary to those proposed by the Joint CLECs. Therefore, I
19 continue to recommend that, if the Commission approves the proposed merger, it
20 should impose all of the Joint CLEC conditions that I supported in my Direct
21 Testimony, as well as those supported by Mr. Gates.

22 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

1 A. Yes.